

[Advisory Opinion 1995-6]

April 11, 1995

TO: [Name1 withheld]
Division of Licensure and Regulatory Services
Department of Health

FROM: Jay L. Cohen, Chair [signed]
Montgomery County Ethics Commission

RE: Request for Advisory Opinion—Policy to Prohibit Acceptance of Food
and Beverages From Regulated Businesses

You have requested an advisory opinion from the Montgomery County Ethics Commission involving a policy which your division would like to implement. Specifically, you have indicated that, although the Montgomery County Ethics Law permits a public employee to accept meals from a business that the employee regulates, you are in the process of establishing a policy for your employees that would prohibit acceptance of food and beverages. You have asked whether this is consistent with the Ethics Law and whether there is a problem with the policy you propose.

As you have indicated, the Ethics Law provides:

(c) A public employee must not knowingly accept a direct or indirect gift from any individual or organization that the public employee knows or reasonably should know:

* * *

(3) owns or operates a business that is regulated by the County agency with which the public employee is affiliated; . . .

§19A-16(c)(3) of the Montgomery County Code 1994, as amended. The Ethics Law also provides that the above-quoted provision does not apply to “meals and beverages under \$50 per event or a higher amount, not to exceed \$100, that the Commission sets . . .” §19A16(d)(a) of the Montgomery County Code.

Accordingly, the policy you have proposed would forbid behavior which is otherwise permitted by the Ethics Law. There is nothing in the Ethics Law, however, which would prohibit your department from imposing and enforcing such a policy on your staff. The question of whether or not the Ethics Commission could also enforce such a policy is a different matter, and may be controlled by 19A-3 of the Montgomery County Code. That provision reads as follows:

If any other County statute or regulation relating to conflicts of interest, financial disclosure, or lobbying disclosure is more stringent than this law, the more stringent provision applies.

In accordance with that provision, the Ethics Commission regularly enforces “regulations” issued by other Departments which are more stringent than the Ethics Law. A “policy”, however, is not as formal as a “regulation”. It thus remains unclear whether or not the Ethics Commission would be required to enforce such a policy, or even if it would have the power to do so. This is especially so in your case, because the proposed policy would forbid something which the Ethics Law specifically allows.

In conclusion, please be advised that the Ethics Commission has ruled as follows: (1) That the issuance and enforcement of such a departmental policy would not violate the Ethics Law, and (2) That the Ethics Commission would require more details concerning the proposed policy or regulation before it can rule concerning whether or not the policy or regulation would be enforceable by the Commission pursuant to §19A-3 of the Montgomery County Code. In that regard, the Ethics Commission further suggests that you may find it helpful to consult with the County Attorney’s Office to determine the most effective and appropriate mechanism for establishing the policy you are contemplating (e.g., a policy, a “regulation”, a reporting requirement, the maintenance of a special log, a public v. intradepartmental disclosures, and/or an outright prohibition).

If you have any questions concerning this advisory opinion, please do not hesitate to contact the Commission.

cc: Barbara McNally, Executive Secretary, Montgomery County Ethics Commission